IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 187 of 2006
Date of decision 15 .9.2006

Parmodh Kumar and others .. petitioners

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Arvind Singh, Advocate for the petitioners
Mr. Harish Rathee, Sr. DAG Haryana.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 23.12.2005 (Annexure P.13) whereby the order of appointment of the petitioners has been rescinded. A further prayer has been made for issuance of a direction to the respondents to allow the petitioners to continue on Class IV posts as per their appointment letters issued on 24.12.2004 /30.12.2004 (Annexures P.5 to P.11) with all consequential benefits.

Brief facts of the case necessary for disposal of the instant petition are that the Director, State Vigilance Bureau, respondent no.3 is stated to have sent a requisition to the Director General of Police, Haryana, respondent no.2 to fill up seven vacancies of Class IV in the office of State Vigilance Bureau. The selection committee was constituted by the Director General of Police and all the petitioners claim to have appeared before the Committee. It is further claimed that they were selected and an intimation in that regard was sent by respondent no.2 to respondent no. 3 as is evident from the perusal of communication dated 16.12.2004. In pursuance to the

afore-mentioned communication, the petitioners were asked to undergo medical examination on 17.12.2004 (annexure P.3). They were found medically fit and the medical certificate dated 17.12.2004 has been placed on record as Annexure P.4 in respect of one of the petitioners i.e. Parmodh Kumar Yadav, petitioner no.1. Similar certificates claims to have been issued to other other petitioners which resulted into issuance of appointment orders to them on 24.12.2004 (Annexures P.5 to P.10). On 23.12.2005, the Director State Vigilance Bureau, respondent no.3, passed an order to the effect that no Class IV post should be filled up without advertising in the newspaper or notifying the same to the Employment Exchange. It pointed out the following illegalities in the selection and appointment of the petitioners:

> " The Director General of Police, Haryana recommended names for filling up seven posts of Class IV employees in this Bureau. As per rules these posts could not be filled up without advertising/ notifying in newspaper or employment exchanges. The office of the Director General of Police Haryana did not advertise these posts as per rules. The board constituted for the selection of the posts to be selected for the class IV employees of this Bureau has not done fair job in interviewing and selecting the candidates for the posts of Class IV employees, which selected and approved the names of seven persons including yourself. Moreover your appointment order was issued after the enforcement of the code of conduct by the Election Commission of India. In view of these unlawful illegalities/ irregularities, the whole selection process by which

you were selected becomes void and illegal."

The afore-mentioned order was issued to the petitioner by observing that it was not possible for respondent no. 3 to keep them in service and the order of appointment issued on 24.12.2004 and 13.12.2004 (Annexures P.5 to P.11) were withdrawn. Feeling aggrieved, the petitioners have approached this Court.

In the written statement a specific stand has been taken by respondents that when 125 vacancies of Class IV posts for HSISF Battalion were advertised and after the interview selection list was published. Accordingly 46, 44 and 41 candidates were selected for 3rd, 4th and 5th Battalion of HSISF. The names of the petitioners were never included in the afore-mentioned select list. These seven posts were found vacant with respondent no. 3 and a requisition was sent to respondent no.2 for filling up the same. However, instead of advertising the afore-mentioned seven posts the names of the seven petitioners were recommended by respondent no.2 asking respondent no. 3 to issue them appointment letters. It is categorically asserted in preliminary objection no.1 and in para 9 of the reply that no advertisement was ever issued for filling up these seven posts and the names of the petitioners were wrongly recommended by respondent no.2 from the unsuccessful candidates of earlier selection. The afore-mentioned written statement was filed on 24.7.2006 and the same has not been controverted by filing any replication highlighting that the posts infact were advertised in the Press inviting applications from all eligible persons in accordance with the rules.

After hearing learned counsel for the parties at some length, we are of the view that the order dated 23.12.2005 (Annexure P.13) does not

suffer from any illegality warranting interference of this Court because the appointment letters (Annexures P.5 to P.11) issued to the petitioners are in flagrant violation of the basic structure of the Constitution as is postulated by Articles 14 and 16(1) of the Constitution. For filling up any post by the State or its subordinate office it is their bounden duty to advertise the post in accordance with the rules and fill up the same after considering the competing claims of all eligible persons who have applied. In the present case no advertisement for filling up 7 posts belonging to Class IV posts under respondent no.3 i.e. Director Vigilance Bureau have never been advertised which would violate the basic structure of the Constitution. In that regard, reliance may be placed on the following para 12 of the judgement in the case of Union Public Service Commission v. Girish Jayanti Lal Vaghela (2006) 2 SCC 482:

> " 12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words 'employment' or 'appointment' cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members

> are fair and impartial though a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (see B.S.Minhas v. Indian Statistical Institute AIR 1984 SC 363."

After citing the afore-mentioned view , a constitution Bench of the Hon'ble Supreme Court in the case of Secretary, State of Karantaka v. Umadevi (2006)4 SCC 1 has held that rule of equality in public employment is the basic feature of the Constitution. The afore-mentioned view is discernible from para 43 of the judgement which reads as under:

> " Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with

Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee....."

When the facts of the present case are viewed in the light of the principles enunciated in the afore-mentioned judgements of the Hon'ble Supreme Court it becomes evident that Class IV posts on which the petitioners were appointed by issuing appointment letters Annexures P.5 to P.11 were never advertised nor the claim of those eligible persons who might be available in the open market were invited, considered and weighed. Therefore, such a selection would result into violation of basic structure of the Constitution as is envisaged by Articles 14 and 16(1) of the Constitution. The petitioners in the instant case are infact unsuccessful candidates who had appeared for interview in respect of Class IV posts advertised for HSISF Battalion. Therefore, there is no merit in this petition and the same is dismissed.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

15.9.2006
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